

PDR

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March 13, 1994

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Supplement to Petition Filed Under 10 C.F.R. 2.206
Against The Florida Power & Light Company

Dear Sir:

COMES NOW, Thomas J. Saporito, Jr., (hereinafter "Petitioner") pursuant to 10 C.F.R. 2.206, and hereby files his Supplement to Petition Filed Under 10 C.F.R. 2.206 Against The Florida Power & Light Company dated March of 1994, requesting specific action by the U.S. Nuclear Regulatory Commission ("NRC") within a reasonable time against the Florida Power & Light Company (hereinafter "Licensee") and operator of the Turkey Point and St. Lucie nuclear stations located in the State of Florida.

Specific Request:

- A. Petitioner requests that the NRC construct and submit an amicus curiae brief to the U.S. Department of Labor ("DOL") pursuant to 10 C.F.R. 50.9; 29 C.F.R. 18.10(d); 29 C.F.R. 18.12; and 10 C.F.R. 50.7 regarding issues of fact in DOL Case Nos. 89-ERA-7/17 (consolidated) concerning the Licensee's retaliatory conduct towards Petitioner during Petitioner's period of employment at the Licensee's Turkey Point nuclear station in 1988 as a direct or indirect result of Petitioner having engaged in "protected activity" under 10 C.F.R. 50.7 and the Energy Reorganization Act of 1974 as amended ("Act"), 42 U.S.C. 5851, Section 210/211.

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- B. Petitioner requests that the NRC institute a show cause proceeding pursuant to 10 C.F.R. 2.202 to modify, suspend, or revoke the Licensee's permissive operational licenses authorizing the operation of the Turkey Point nuclear station.
- C. Petitioner requests that the NRC institute a show cause proceeding pursuant to 10 C.F.R. 2.202 and Order the Licensee to provide the Petitioner with a "make whole" remedy, including but not limited to, immediate reinstatement to his previous job as an instrument control technician at Turkey Point, back wages, front pay, interest on back wages and front pay, compensatory damages for pain and suffering, and a posting requirement to offset any "chilling effect" Petitioner's discharge may have had on other Licensee employees at the Turkey Point and St. Lucie nuclear stations.

Basis and Justification:

1. In Case Nos. 89-ERA-7/17 (consolidated), the ALJ rendered a decision in June of 1989 concluding, in part, that Complainant's refusal to divulge his safety concerns to FPL's vice president, John Odom, was insubordinate conduct by Complainant justifying termination.

FPL claimed it fired Petitioner for three reasons: (1) for refusing to divulge his safety concerns to Mr. Odom on November 23, 1988; (2) refusing to meet with Odom on November 30th (to divulge his safety concerns); and (3) refusing to submit to a physical exam by a company doctor.

2. The NRC is mandated by Congress to ensure that a non-hostile work environment exists at facilities licensed to operate by the NRC. The NRC simply cannot tolerate a "hostile work environment" at the FPL Turkey Point nuclear station insofar as allowing licensee management to discipline employees for not divulging their safety concerns to the licensee. This situation is significant because discrimination (e.g., discipline) creates a "chilling effect" that discourages other licensee employees from raising safety issues. Such an environment cannot be

tolerated if licensees and the NRC are to fulfill their responsibility to protect the public health and safety. Thus, licensee management must avoid actions that discriminate against individuals for raising safety concerns, and must promptly and effectively remedy actions that constitute discrimination.

3. FPL's interrogations of Petitioner about his protected activity in 1988 were illegal conduct under the law and NRC regulations under Title 10 of the Code of Federal Regulations. The record in Case No. 89-ERA-7/17 (consolidated), demonstrates that the licensee doesn't contest that on two occasions Petitioner refused to tell Odom, an FPL vice president, safety concerns that everyone involved knew had already been reported by Petitioner to the NRC. (i.e. DeMiranda and Jenkins and other NRC officials). As a matter of law and under NRC regulations, an employee's refusal to tell an employer about safety concerns communicated to the NRC cannot be considered insubordination.
4. Subsequent to the trial in Case No. 89-ERA-7/17 (consolidated), Petitioner discovered that at least (18) eighteen pages of testimony from the case transcripts in the DOL proceeding were missing from the official record of the DOL. Significantly, the 18 pages of missing transcripts contained testimony of FPL's vice president at Turkey Point, John Odom. Odom's testimony under oath in this case was extremely critical of the NRC. Odom testified that "...the NRC is not technically capable to determine what a nuclear safety concern is..." that only he [Odom] could determine what constituted a nuclear safety concern. On this basis, FPL asserted to the DOL that Saporito's refusal to tell Odom his safety concerns was insubordination and warranted termination.

The testimony of Odom was immediately addressed to the NRC during the trial. Saporito contacted NRC SACRII, Oscar DeMiranda, and informed DeMiranda of Odom's comments about the NRC's inability to determine what constitutes a nuclear safety concern. Saporito requested that DeMiranda appear at trial to refute FPL's statements but DeMiranda stated that his superiors would not permit his participation at trial.

The NRC failed to assist the DOL in this matter in spite of previous communications between the NRC (George Jenkins, Oscar DeMiranda, Regional Counsel, and others) informing Petitioner's counsel that Odom was told by the NRC, prior to his ordering Saporito to divulge his safety concerns to FPL, that no significant health and safety issues existed which would prevent the safe operation of the Turkey Point station. The NRC also told Odom that the NRC's Office of Investigations was actively investigating Saporito's allegations of alleged criminal conduct and that Odom and FPL were not privy to that information.

5. The NRC must challenge FPL's position by filing an amicus curia brief in this case holding that employees should **not** be required to disclose nuclear safety concerns to the licensee. The NRC cannot allow FPL's position to stand because the agency will contradict its own policies and regulations that expressly recognize the right of employees to bypass management and report their concerns to the NRC directly.
6. The interrogation of an employee about safety concerns he or she has communicated to the NRC constitutes discrimination under Section 210 and (now Section 211) of the ERA. The NRC must not allow licensees' internal programs (e.g., employee concerns programs) to be a substitute of the employees' right to bypass management and report their safety concerns directly to the NRC. In deed, common sense would hold that the human nature of employees placed in this situation, (required to report safety concerns to the licensee), would cause employees to be dissuaded from raising safety concerns for fear of retaliation by the licensee.

Therefore, the NRC must provide licensee employees with a work environment that permits employees to bypass licensee management and report perceived safety concerns directly to the NRC. A case on point here is, Thomas J.

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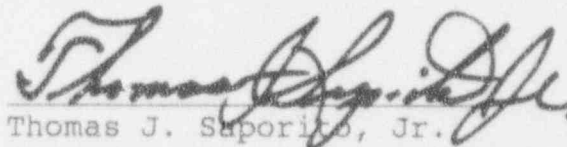
Saporito, Jr. v. Arizona Public Service Company, et. al., Case No. 92-ERA-30. In this case the licensee admitted that its management retaliated against Saporito because he raised safety concerns directly to the licensee management. It is human nature that licensee management would characterize an employee as a "troublemaker" and a "non-team player" for bypassing management and going directly to the NRC with perceived safety concerns especially, in light, of the fact that in Case No. 92-ERA-30, the employee first went to the licensee before going to the NRC.

WHEREFORE, premises considered, the licensee cannot demonstrate to the NRC reasonable assurance that the Licensee did not illegally retaliate against Petitioner in terminating Petitioner's employment at Turkey Point in December of 1988, for Petitioner having engaged in "protected activity" or that a "chilling effect" does not exist at the Turkey Point and/or the St. Lucie nuclear facilities. Accordingly, it is appropriate for the NRC to consider this petition under 10 C.F.R. 2.206 wherein the Petitioner has set forth the facts that constitute the basis for the request. See, Philadelphia Electric Company (Limerick Generating Station, Units 1 & 2), DD 85-11, 22 NRC 149, 154 (1985).

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Petitioner strenuously urges the NRC to assist the DOL process by submitting an *amicus curiae* brief to the SOL in Case No. 89-ERA-7/17 (consolidate) holding that licensee employees have a right to bypass licensee management and report perceived safety concerns directly to the NRC.

Respectfully submitted,
For the Environment,


Thomas J. Saporito, Jr.

cc: Hon. Joseph I. Lieberman
Chairman, subcommittee on Clean Air
and Nuclear Regulation
United States Senate
Committee on Environment and Public Works
Washington, D.C. 20510-6175

Hon. David Williams
Inspector General
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